

(e) *Final certification.* An election under section 1103(h) shall not apply unless the final certification referred to in section 1101(e) or section 6158(c)(2), as the case may be, includes a certification by the Federal Reserve Board that the bank holding company has disposed of either all banking property or all nonbanking property.

(f) *Conditional certification.* A certification by the Federal Reserve Board under section 1101 (a)(1)(B), 1101 (b)(1)(B), 1101 (c)(2)(C), 1101 (c)(3)(C), or 6158(a) that is conditioned upon the bank holding company's making an election under section 1103(h) shall not be considered to be made before the distribution or sale unless the certification and the election are made before the distribution or sale.

[T.D. 7570, 43 FR 52057, Nov. 8, 1978. Redesignated by T.D. 8435, 57 FR 43896, Sept. 23, 1992]

§301.9100-11T Election by a qualified bank holding corporation to pay in installments the tax attributable to sales under the Bank Holding Company Act.

(a) *In general.* Under section 6158(a) of the Code, a qualified bank holding corporation may elect to pay in installments the tax under chapter I of the Code attributable to the sale of bank property or prohibited property (as those terms are defined in section 6158(f) (2) and (3)) if—

(1) It meets the conditions described in paragraph (b) of this section, and

(2) It files an election in accordance with the rules set forth in paragraph (c) of this section.

(b) *Conditions.* (1) The sale of bank property or prohibited property must take place after July 7, 1970.

(2) The Federal Reserve Board must certify before the sale of the bank property or prohibited property that the divestiture of such property is necessary or appropriate to effectuate section 4 or the policies of the Bank Holding Company Act (12 U.S.C. 1841 *et seq.*).

(3) If bank property is sold, the qualified bank holding corporation (or a corporation having control of it or a subsidiary of it) must not have—

(i) Previously elected to apply section 6158 to a sale of prohibited property, or

(ii) Previously distributed prohibited property under section 1101(a).

(4) If prohibited property is sold, the qualified bank holding corporation (or a corporation having control of it or a subsidiary of it) must not have—

(i) Previously elected to apply section 6158 to a sale of bank property, or

(ii) Previously distributed bank property under section 1101(b).

(5) The qualified bank holding corporation must not have elected to return the income from the sale under the installment provisions of section 453.

(c) *Time and manner of making election.* (1) Except as provided in paragraph (c)(2) of this section, a qualified bank holding corporation shall make the election under section 6158(a) by—

(i) Attaching a statement to its income tax return for the taxable year in which the prohibited property or bank property is sold showing the tax computation under paragraph (f) of this section and the amount of the installment paid with the return, and

(ii) Entering the amount of the installment payment followed by the words “computed under section 6158” in the appropriate place on the tax return.

(2) If the qualified bank holding corporation filed its income tax return for the year of sale before February 6, 1979 (without electing under section 6158(a)), then it shall make the election under section 6158(a) by attaching a statement to its claim for credit or refund (amended tax return) for its overpayment of income tax attributable to the application of section 6158 showing the tax computation under paragraph (f) of this section and entering the amount of the credit or refund followed by the words “attributable to the application of section 6158” in the appropriate place on the claim. In order for the election to be effective, the claim must be filed before the earlier of—

(i) The expiration of the period of limitation for the filing of the claim, or

(ii) February 6, 1979.

(d) *Scope of election.* An election under section 6158 will apply only to the particular sale or sales of property with respect to which the election is being made.

(e) *Special rule for certifying sales.* For purposes of section 6158(a) and paragraph (b)(2) of this section, in the case of a sale which takes place after July 7, 1970, and before January 1, 1977, a certification by the Federal Reserve Board shall be treated as made before the sale if application for such certification was made before January 1, 1977.

(f) *Tax attributable to sales.* The tax under chapter I of the Code attributable to sales with respect to which an election under section 6158 has been made shall be the amount, if any, by which the tax under chapter I on the taxable income of the qualified bank holding corporation (computed without regard to section 6158) for the taxable year during which the sales occur exceeds the greater of—

(1) The tax under chapter I for such year on the taxable income of the corporation exclusive of gains on sales of

property with respect to which an election under section 6158 has been made, or

(2) The tax under chapter I for such year on the taxable income of the corporation exclusive of gains and losses on all sales of the type of property (either bank property or prohibited property) with respect to which an election under section 6158 has been made.

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§ 301.9100-12T Various elections under the Tax Reform Act of 1976.

(a) *Elections covered by temporary rules.* The sections of the Internal Revenue Code of 1954, or of the Tax Reform Act of 1976, to which this section applies and under which an election or notification may be made pursuant to the procedures described in paragraphs (b) and (d) are as follows:

(1) FIRST CATEGORY

| Section | Description of election | Availability of election |
|----------------------------|-------------------------------------------------------------------|------------------------------------------------------------------------------------------------------|
| 167(o) of Code | Substantially rehabilitated historic property | Additions to capital account occurring after June 30, 1976, and before July 1, 1981. |
| 172(b)(3)(E) of Code | Forego of carryback period | Any taxable year ending after December 31, 1975. |
| 402(e)(4)(L) of Code | Lump sum distributions from qualified plans. | Distributions and payments made after December 31, 1975, in taxable years beginning after such date. |
| 812(b)(3) of Code | Forego of carryback period by life insurance companies. | Any taxable year ending after December 31, 1975 |
| 819A of Code | Contiguous country branches of domestic life insurance companies. | All taxable years beginning after December 31, 1975. |
| 825(d)(2) of Code | Forego of carryback period by mutual insurance companies. | Any taxable year ending after December 31, 1975. |
| 911(e) of Code | Foregoing of benefits of section 911 | All taxable years beginning after December 31, 1975. |

(2) SECOND CATEGORY

| | | |
|----------------------|----------------------------------------------------|------------------------------------------------------|
| 185(d) of Code | Amortization of railroad grading and tunnel bores. | All taxable years beginning after December 31, 1974. |
| 1057 of Code | Transfer to foreign trusts etc | Any transfer of property after October 2, 1975. |

(b) *Time for making election or serving notice—(1) Category (1).* A taxpayer may make an election under any section referred to in paragraph (a)(1) of this section for the first taxable year for which the election is required to be made or for the taxable year selected by the taxpayer when the choice of the taxable year is optional. The election must be made by the later of the time, including extensions thereof, prescribed by law for filing income tax returns for such taxable year or March 8, 1977.

(2) *Category (2).* A taxpayer may make an election under any section referred to in paragraph (a)(2) for the first taxable year for which the election is allowed or for the taxable year selected by the taxpayer when the choice of the taxable year is optional. The election must be made (i) for any taxable year ending before December 31, 1976, for which a return has been filed before January 31, 1977, by filing an amended return, provided that the period of limitation for filing claim for credit or refund of overpayment of tax, determined from the time the return